

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications)	
Act of 1996)	
)	
ITC^DeltaCom Communications, Inc.)	
Petition for Waiver of the)	DA 01-2030
Supplemental Order Clarification)	

REPLY OF THE VERIZON TELEPHONE COMPANIES¹

The comments demonstrate that grant of ITC^DeltaCom's ("ITC's") requested waiver would prejudice the issues that are currently ripe for Commission decision. AT&T, for example, cites the "substantial record that has already been amassed" and points out that a ruling would "moot" ITC's waiver request. AT&T at 2. Likewise, The United States Telecom Association notes that ITC made identical arguments in its April 30 reply comments in the policy proceeding that it made in support of its waiver petition. USTA at 2-3. This shows that even ITC considers the issues the same and that it is using the waiver to induce the Commission to pre-judge those issues without thoroughly reviewing the comprehensive record in the policy proceeding.

As SBC points out, grant of petition would be inconsistent with the Act, because ITC has not shown it is impaired in its ability to offer services if it is not permitted to commingle special access services and loop-transport combinations. *See* SBC at 5. In fact, ITC admits it has provided its services through special access circuits for the past four years. Petition at 4. Grant

¹ The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc. listed in Attachment A.

of the waiver would also violate the Commission's carefully-constructed set of "safe harbors" under which a carrier may convert special access services to unbundled loop-transport combinations when it uses those facilities to carry a significant amount of local traffic. These safe harbors were established precisely to avoid prejudging the pending rulemaking in which the Commission needs to apply the impairment test to the very situation in ITC's Petition. *See* SBC at 2-3.

WorldCom uses this proceeding to renew its own waiver petition – a request which Verizon showed was itself simply a rehash of issues that WorldCom previously raised and lost before the Commission. *See* Opposition of the Verizon Telephone Companies (filed Oct. 2, 2000); Reply of the Verizon Telephone Companies (filed Oct. 10, 2000). In particular, as SBC notes here, WorldCom based its waiver principally on its claim that a ban on commingling is inefficient and would require duplicate networks. But the Commission rejected this very claim when WorldCom made it in an earlier *ex parte* filing. *See* SBC at 3-4, citing Letter dated April 4, 2000, to Mr. Larry Strickling, Chief, Common Carrier Bureau, from Chuck Goldfarb, MCI WorldCom. And ITC's principal argument here is precisely the same, that allowing commingling is the "most efficient and least risky way for ITC^DeltaCom to implement its business plan." Petition at 6. That claim not only falls far short of meeting the impairment test that Congress established for establishing unbundled network elements under section 251(d)(2), as Verizon showed in its opening comments at 4-5, it completely fails to demonstrate even a need to create a new arrangement that commingles unbundled network elements and tariffed services, which is what ITC requests. By ITC's own admission, it has successfully used special access services to meet the needs of its customers since 1997 and has some 3000 such circuits in operation. *See* Petition at 4. Therefore, the record shows that ITC does not need a new

commingled arrangement and that it would not be impaired from offering its services if it could not commingle special access services with unbundled network elements. ITC's Petition does not even approach the showing of "extraordinary circumstances" that the Commission requires to support a waiver of its existing "safe harbor" rules. *See Supplemental Order Clarification*, 15 FCC Rcd 9587, & 23 (2000).

CompTel argues that ITC does not even need a waiver. It claims existing Commission orders merely prohibit unbundled loop-transport combinations from being "connected to" a tariffed service, and that this does not prohibit unbundled network elements and special access services to be "combined" or "commingled" on the same facility. CompTel at 2. CompTel's semantic efforts to circumvent the Commission's orders is wrong. Paragraph 22 of the *Supplemental Order Clarification*, which sets out the "safe harbors" within which special access services may lawfully be converted to loop-transport combinations, specifically requires that "[w]hen a loop-transport combination includes multiplexing (*e.g.*, DS1 multiplexed to DS3 level) [as it does here], *each* of the individual DS1 circuits must meet this [safe harbor] criteria." *Supplemental Order Clarification* at & 22 (emphasis added). This means that every one of the DS1 circuits that ITC proposes to multiplex on to its DS3 would need qualify under the safe harbor criteria in order that any one of them can be converted to a loop-transport combination.

If there were any doubt as to the meaning of paragraph 22, the Commission removed that doubt six paragraphs later. There, the Commission rejected requests (by WorldCom and others) that it eliminate the prohibition on "co-mingling," which it defined as "*combining* loops or loop-transport combinations with tariffed special access services." *Supplemental Order Clarification* at & 28 (emphasis added). CompTel, of course, failed to mention that language, because it negates its argument.

Even if CompTel's reading of the *Supplemental Order Clarification* were correct, which it is not, ITC *is* asking to connect unbundled network elements to tariffed access services. Its proposed network diagram that appears in the Petition at Exh. B shows that ITC plans to *connect* a DS3 special access entrance facility from its POP, through a multiplexer, to a combination of special access loops to some customer premises, unbundled network element local loops to other customer premises, and DS1 special access interoffice facilities. The pure fantasy that CompTel conjures up in an attempt to support its misreading of the Commission's rules is shown by its argument that "ITC^DeltaCom would not in any way be 'connecting' the EEL to a tariffed ILEC service. Rather, the DS1 EEL would run straight from the customer's premises through to the ITC^DeltaCom's point of presence." CompTel at 2. Even a cursory glance at ITC's proposed network diagram (Petition at Exh. B) shows that the DS1 facilities run from the customer's premises and terminate in a special access multiplexer. At that point, they are *connected to* (multiplexed on) the DS3 special access circuit to ITC's POP. As a result, ITC's Petition itself contradicts CompTel's arguments.

Another example, of the games CompTel is playing is its indirect advocacy of "ratcheting." CompTel uses word games to claim that the Commission not only allows such arrangements but that ITC is proposing ratcheting here. *See* CompTel at 2 ("the Commission expected CLECs to engage in *channelized* facility usage, as ITC^DeltaCom proposes here"). There are, however, only two existing arrangements to accomplish "channelizing." One is by *connecting* unbundled loop-transport combinations to tariffed access services, which, as CompTel admits, is specifically barred by the "safe harbor" rules. The other is for the channelized facility to ride, along with special access services, on a higher level facility (*e.g.*, a DS1 multiplexed on to a DS3). Under that arrangement, in order not to become a banned

“connection to tariffed services,” the portion of the DS3 that carries unbundled loop-transport combinations would have to be charged at the rate for unbundled network elements, while the portion that carries special access services would be charged at special access rates. This arrangement is called “ratcheting.” Therefore, even though ITC specifically disavows any intent to adopt ratcheting of rates, Petition at 2 (“ITC^DeltaCom is not seeking a ratcheting solution for the DS3 entrance facility as part of this waiver request”), CompTel is trying to interject just that issue by its comments. The Commission should disregard CompTel’s comments in that regard. In any event, contrary to CompTel’s semantic gymnastics, the Commission has never permitted ratcheting in connection with use of unbundled network elements in place of special access services and should not address it here.

Therefore, there can be no doubt that the arrangement ITC wants would violate existing law. For the reasons stated in Verizon’s initial comments and above, ITC’s waiver request should be denied.

Respectfully submitted,

/S/

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.